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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JONATHAN CARABAJAL,

Defendant and Appellant.

D074445

(Super. Ct. No. SCN357158)

APPEAL from a judgment of the Superior Court of San Diego County, Richard R. Monroy, Judge. Affirmed.

Siri Shetty, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury found Michael Jonathan Carabajal guilty of several offenses related to two domestic violence incidents in which he strangled a woman (the victim), with whom he had been romantically involved, and dislocated her hip. The superior court sentenced

him to 14 years 4 months in prison. Carabajal appealed the judgment and appointed appellate counsel filed a brief presenting no argument for reversal but inviting this court to review the record for error in accordance with *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Carabajal has not responded to our invitation to file a supplemental brief. After having independently reviewed the entire record for error as required by *Anders v. California* (1967) 386 U.S. 738 (*Anders*) and *Wende*, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The People charged Carabajal with attempted murder (Pen. Code, §§ 664, 187, subd. (a),¹ count 1), forcible rape (§ 261, subd. (a)(2), count 2), residential burglary (§§ 459, 460, subd. (a), 667.5, subd. (c)(21), count 3), making a criminal threat (§ 422, count 4), assault by means likely to produce great bodily injury (§ 245, subd. (a)(4), count 5), inflicting corporal injury (§ 273.5, subd. (a), count 6), felony false imprisonment (§§ 236, 237, subd. (a), count 7), and cruelty to a child (§ 273a, subd. (b), count 8) in connection with events that occurred on March 17, 2016; and with additional counts of assault by force likely to produce great bodily injury (§ 245, subd. (a)(4), count 9) and inflicting corporal injury (§ 273.5, subd. (a), count 10) in connection with events that occurred on December 18, 2015. They further alleged he personally inflicted great bodily injury as defined by section 12022.7, subdivision (e) with respect to counts 1 through 7; suffered a prior conviction for domestic violence within the meaning of

¹ All further statutory references are to the Penal Code.

section 273.5, subdivision (f)(1) as to counts 6 and 10; and suffered two prison prior convictions within the meaning of section 667.5, subdivision (b).

Prosecution's Case

On the evening of December 18, 2015, Carabajal strangled the victim with his hands around her neck until she passed out. He also pushed her against the bed, leaving a red mark across her spine.

On the afternoon of March 17, 2016, Carabajal appeared at the victim's home, pushed her onto a massage table in the living room, removed her clothes, and started to have sex with her. She told him no, but he continued. Later, he grabbed her by the hair and forced her into the bedroom. He hit her in the face, strangled her, and told her he was going to kill her. He strangled her a second time, until she urinated, defecated, and passed out; he also threw her against a wall, dislocating her hip and possibly fracturing the head of her femur. The victim's daughter came home and saw Carabajal standing naked over her injured mother. She told him to leave and called 911.

Two other women testified as to violent encounters they had with Carabajal and an expert witness testified regarding typical behaviors exhibited by individuals in abusive relationships.

Defense's Case

The defense questioned the victim's credibility, alleged she lied about the nature of her at-home massage business, and pointed out inconsistencies in her story, including that she had an ongoing relationship with Carabajal despite the alleged abuse. Defense counsel also presented a biomechanical engineer who opined the marks observed on the

victim's neck were not consistent with strangulation, although he admitted the type of hip dislocation she suffered was rare and would require force.

Verdict and Sentencing

The jury acquitted Carabajal of attempted murder (count 1), forcible rape (count 2), and assault by force likely to produce great bodily injury (count 9), but found him guilty of the lesser included offenses of assault and battery as to count 2 and simple assault as to count 9. The jury found Carabajal guilty of the remaining counts and found the associated great bodily injury allegations true. Carabajal admitted the truth of the prior conviction allegations, including that he had a prior conviction for domestic violence within the meaning of section 273.5, subdivision (f).

The superior court sentenced him to total term of 14 years 4 months in prison, including six years for burglary (count 3), five years for the great bodily injury allegation (§ 12022.7, subd. (e)), one year four months for the previous corporal injury (count 10), and two years for the two prison priors (§ 667.5, subd. (b)). The court dismissed the misdemeanor assault conviction (a lesser included offense of count 2), imposed a concurrent term on the child cruelty conviction (count 8), and stayed the remaining counts under section 654.

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings in the trial court. Counsel presented no argument for reversal but invited this court to review the record for error in accordance with *Wende, supra*, 25 Cal.3d 436.

Counsel has identified the following "information about possible issues appearing in the record" (*Anders, supra*, 386 U.S. at p. 744):

"Whether the trial court erred by imposing a one-year enhancement for a prison prior based on the same conviction that elevated Carabajal's sentence under section 273.5, subdivision (f)?"

After we received counsel's brief, we gave Carabajal an opportunity to file a supplemental brief. He has not responded.

A review of the record pursuant to *Wende* and *Anders*, including the issue suggested by counsel, has disclosed no reasonably arguable appellate issue. A single prior conviction and resulting prison term can be used both to elevate an alleged crime and to enhance the resulting sentence in accordance with section 667.5, subdivision (b). (*People v. Colorado* (1995) 12 Cal.4th 145, 159.) Section 667.5 imposes an additional term based on the " 'status of the recidivist offender engaging in criminal conduct, not to the conduct itself[,]' " and therefore does not implicate multiple punishment based on a single act or omission. (*Id.* at p. 157; see also *People v. Price* (1992) 4 Cal.App.4th 1272, 1278 [statutes increasing sentence for offender previously convicted of a similar crime and for offender who committed a serious felony having previously committed a serious felony are within the Legislature's purview and serve different but related penal objectives].)

Carabajal has been adequately represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

HALLER, Acting P. J.

WE CONCUR:

O'ROURKE, J.

DATO, J.